HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT PETITION NO.10983 OF 2006

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Between:

Katipalli Narasimha Reddy

…Petitioner

A n d

Andhra Pradesh State Consumer Disputes Redressal Commission, Eruvaka Bhavan, Khairatabad, Hyderabad and others

…Respondents

:: **O R D E R** ::

Counsel for petitioner : Sri C.Ramesh Sagar

Counsel for respondents :

17th August 2006

Per G.V.Seethapathy, J

This is a petition for quashing order dated 12.11.2003 passed by the District Consumer Forum, Karimnagar (for short `the District Forum') in C.D.No.248 of 2002 and for grant of a declaration that the execution proceedings in P.P.No.10 of 2004 pending before the District Forum are not maintainable.

The petitioner is one of the partners of the Firm M/s. Sri Raja Rajeshwara Hire Purchase Finance, Jagtial. The third respondent Katepalli Santhosh Reddy filed a complaint before the District Forum under Section 12 of the Consumer Protection Act, 1986 (for short `the 1986 Act') with the allegation that he had deposited an amount of Rs.30,000/- with the firm as fixed deposit under the four deposit accounts and the firm issued fixed deposit certificates bearing Nos.426,427 on 14.3.1996 and 2258 and 2260 on 4.9.1996. He further averred that as per the scheme advertised by the firm, it was required to conduct lucky draws which it failed to do and in spite of the repeated demands, amount deposited by him has not been returned, which amounts to deficiency in service. The complaint filed by the third respondent was registered as C.D.No.248 of 2002.

The petitioner herein and two other partners of the firm, who were impleaded as opposite parties in C.D.No.248 of 2002 remained ex parte and did not contest the claim.

On a consideration of the material on record, the District Forum vide its order dated 12.11.2003 allowed the complaint C.D.No.248 of 2002 against the petitioner herein and directed him to pay total maturity amount of Rs.30,000/- together with interest at 9% per annum holding that there was deficiency in service on his part. However, the complaint was dismissed against opposite parties No.2 and 3 with the observation that the complainant has not filed any document to show that the opposite parties 2 and 3 are partners of the firm.

In terms of the order passed by the District Forum, the petitioner was required to pay the amount due to respondent No.3 within a period of one month, but he failed to do so. Therefore, respondent No.3 filed P.P.No.10 of 2004 before the District Forum for realization of the amount due in execution of order dated 12.11.2003.

The petitioner herein filed counter in P.P.No.10 of 2004 inter alia contending that the notices in the main complaint were not served on him. He further contended that the complainant's father Bhooma Reddy entered into a written agreement, dated 21.05.2004, whereunder he accepted Rs.53,000/- in full discharge of the liability and promised to withdraw the complaints and, therefore, the execution petition is liable to be dismissed.

During the pendency of the execution proceedings, the petitioner instituted the present petition and succeeded in persuading the vacation Bench to pass interim order in his favour.

In the affidavit filed by him, the petitioner has averred that 3rd respondent had manipulated ex parte order for his arrest in P.P.No.10 of 2004 and on coming to know of the same, he filed revision in No.145 of 2006 before the first respondent-Andhra Pradesh State Consumer Disputes Rederessal Commission, Hyderabad (for short,

`the State Commission'). The State Commission initially suspended the orders of the second respondent on 17.2.2006, but subsequently, dismissed the revision with a direction to him to comply with the orders of the District Forum within six weeks.

Sri C.Ramesh Sagar, learned counsel for the petitioner argued that in view of the provisions contained in Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (for short `the 1999 Act'), the District Forum could not have entertained the complaint preferred by respondent No.3. He submitted that the 1999 Act constitutes complete code in the matter of recovery of the amount due to the depositor and, therefore, the District Forum did not have the jurisdiction to entertain the complaint filed under Section 12 of the 1986 Act.

We have thoughtfully considered the arguments and submissions of the learned counsel, but have not felt persuaded to entertain the writ petition. Undisputedly, the petitioner who was impleaded as opposite party in the complaint filed by respondent No.3 did not contest the complaint. Therefore, the District Forum considered the matter on merits and directed the petitioner herein to pay the amount due to the third respondent. There is nothing on record to show that the petitioner challenged the jurisdiction of the District Forum by invoking the provisions of the 1999 Act either before the District Forum or the State Commission. On the other hand, in the counter filed by the petitioner in P.P.No.10 of 2004 before the District Forum, he raised a plea of discharge. Admittedly, the Revision No.145 of 2006 filed by the petitioner was dismissed by the State Commission. The petitioner has not challenged the order of the State Commission in

this writ petition. In our opinion, by having submitted to the jurisdiction of the District Forum, the petitioner will be deemed to have waived his challenge to the competency of the District Forum to entertain the complaint filed by the complainant.

Even otherwise, we are convinced that the provisions contained in the 1999 Act cannot be construed as imposing bar to the jurisdiction of the District Forum to entertain the complaint made under Section 12 of the 1986 Act. The 1999 Act has been enacted by the State Legislature for protecting the interests of depositors. Section 2 (b) of the 1999 Act defines the term 'deposit' as the deposit of sum of money either in lumpsum or instalments made with a financial establishment for a fixed period, for interest or return in any kind. Section 2 (c) defines the term 'financial establishment' as an individual, an association or body of individuals or a firm carrying on the business of receiving deposits under any scheme or arrangement or in any other manner but does not include a company registered under the Companies Act, 1956 or a corporation or a cooperative society owned and controlled by any State Government or the Central Government, or a banking company as defined in Section 5(c) of the Banking Regulation Act, 1949 or a non-banking financial company as defied in Clause (f) of Section 45-I of the Reserve Bank of India Act, 1934. Section 3 which beings with non obstante clause lays down that where any financial establishment defaults or is likely to default in the return of deposits in cash or kind, the Government can pass interim order for attaching the money or other property belonging to financial establishment. Section 4 defines the competent authority to exercise control over the properties attached by the Government under Section 3. Section 5 provides for penalty for default in the return of deposit or payment of interest. Sections 6 and 7 provide for constitution of

special courts to deal with the cases of the defaulters and powers of such courts to attach the property of the defaulting financial establishment or the concerned person.

The 1986 Act was enacted by the Parliament to provide for better protection of the interests of consumers. Chapter III of the Act provides for establishment of consumer disputes redressal agencies at the district level, state level and national level; jurisdiction of these agencies and procedure to be followed for redressal of the grievances of the consumers. The District Forums are empowered to deal with the complaints relating to defects in the goods or deficiency of services. The purpose and scheme of the two enactments are entirely different and there is no inconsistency between them. While the consumer fora created under the 1986 Act give protection to the consumers against defective goods and services, the 1999 Act provides for imposition of penalty on the financial establishments committing default in the return of deposit and payment of interest. In our opinion, the two statutes are complementary to each other. Therefore, it is not possible to agree with the learned counsel for the petitioner that the District Forum did not have jurisdiction to entertain the complaint..

In the result, the writ petition is dismissed.

As a sequel to the dismissal of the writ petition, interim order dated 30.5.2006 shall automatically stands vacated.

G.V.SEETHAPATHY, J

G.S.SINGHVI, CJ

17th August 2006

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